



Arizona Electric Power Cooperative, Inc.

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April 14, 2004

Ms. Jean Gray
Assistant Regional Manager for Power Marketing
Western Area Power Administration
P.O. Box 6457
Phoenix, AZ 85005-6457

**RE: Proposed Language, Section 12, (Review and Adjustment of Federal Power Allocation)
to Draft Amendment No. 1 to Contract No. 87-BCA-10085 (Parker Davis Project
Electric Service Contract Extension)**

Dear Ms. Gray:

Arizona Electric Power Cooperative, Inc. offers the following comments on the latest iteration proposed by Western on March 31, 2004 for Section 12 of the Amendment.

To begin, we find it troubling that Western anticipates taking comments and “soon after” intends to mail executable documents for signature. While we understand the issues of Section 12 have taken time, indeed since January 23, for Western to consider in light of its customers’ earlier filed comments and our jointly-preferred Section 12 language, we are concerned that Western unilaterally adopt the current or some other alternative without further discussion, public understanding and comment and consensus.

Western has indicated this has become a system-wide matter, with input from Power Marketing Managers from all Western regions and the Corporate Services Office. We wonder if those managers had your customers’ comments, our suggestions for revisions, and our views when making that input. If this Section 12 language is to serve as a prototype Western-wide, it would seem helpful to its acceptance if Western could offer it as a product of its customers’ review and comment. As well, such consideration may well improve the final product. Consequently, AEPCO requests that review be further extended for such an examination. We believe it necessary also for Western to hold meetings with its customers to clarify the meaning of some of the language proposed (e.g., in Section 12.1, what actions taken by a contractor would abrogate preference status?), particularly as Western introduces such a concept for the first time.

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As to the proposed language of Section 12.2 itself:

AEPCO believes Western intends by Section 12.2, consistent with its legal obligations, to continue to foster widespread use of federal hydro power and seeks flexibility for that purpose. Therefore, to that end, any change in Contractor status under Section 12.2 should have an adverse impact on that principle. Simply put, the change must result in a significant reduction or material diminution of service to consumers to give rise to a Federal interest in adjusting a Contractor's hydro allocation. Otherwise, if there is no impact, why should it matter to Western if any of the events listed in 12.2 happen?

For this reason, AEPCO believes it critical for Western to include also in Section 12.2 as a triggering impact, "that the Contractor's contractual obligation to supply electricity to a preference entity or preference entities is materially diminished as a result of the change in Contractor's status" or "that there has resulted a significant reduction in remaining load measured against the criteria used by the Administrator in initially approving the Contractor's allocation."

Inclusion of such language would also protect Western against the perception of a conflict of interest which benefits Western's merchant side, that an adjustment decision could be made for the wrong reasons.

In addition, and as further cause to include an impact trigger, AEPCO notes that in its system a partial requirements distribution cooperative member has the right, at any time, to withdraw as a member of AEPCO and still hold AEPCO to its contractual obligation to provide that member with power and energy. Consequently, AEPCO could "lose one or more members from its membership organization" without any change in its duty to serve those same members. Surely, Western does not intend, nor would it be fair to the Contractor or the public Western is obliged to protect, to make an "adjustment" for such a reason. Yet that is what Section 12.2 provides.

We expect Western's other PDP customers to also comment and seek inclusion of: (i) October 1, 2008 as the date after which a Contractor's actions will be measured; (ii) mechanisms for a Contractor to send notice of a change and receive a written response from Western with "the nature of and reasons for the Administrator's intended action prior to implementation of such action; and (iii) insertion of "by reason of action by the Contractor" after the words "in some manner" on line 5 of Section 12.2 to mirror and maintain the equity inherent in the Section 12.1 language which first requires an act of the Contractor before any Administrator action. AEPCO supports these comments and asks they be included as if made herein by AEPCO.

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AEPCO believes these requests to be reasonable, fair and of benefit to Western, its contractors and the public. Further, we believe the revisions sought by ourselves and others will result in resolving disputes. The current language instead appears to invite them.

We ask Western to continue to work with its customer group and reach a good conclusion – not just a conclusion. Again, we appreciate your efforts.

Very truly yours,

/s/ Patricia E. Cooper

Patricia E. Cooper
Chief Legal Officer

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